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In the High Court of Judicature at Madras

Dated:27.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. TAMILVANAN

Habeas Corpus Petition Nos.53, 197 and 200 of 2006

G. Balaji .. Petitioner in HCP.53/06
Abdullah Ibrahim Ali .. Petitioner in HCP.197/06
Hussain Shahul Hameed .. Petitioner in HCP.200/06

vs.

1. State of Tamil Nadu
   rep. By Secretary to Government
   Public (SC) Department
   Fort St. George
   Chennai 600 009.

2. The Union of India rep. by
   The Secretary to the Government
   Ministry of Finance,
   Department of Revenue
   (COFEPOSA-UNIT), New Delhi.

3. The Superintendent of
   Central Prison
   Central Prison, Chennai 3. .. Respondents in all HCPs.

Petitions filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus

HCP NO. 53/2006:

Calling for the records relating to the detention order in G.O.No.SR.1/1182-2/2005 dated 30.12.2005 passed by the Ist Respondent herein and quash the same and direcat the respondent to produce the body of the person of the detenu Viz., Balaji s/o Gajendran before this Court, now detained under Sec 3(1)(i) to the COFEPOSA ACT in the Central Prison, Chennai and set him at liberty.

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HCP NO. 197 OF 2006:

Calling for the records relating to the detention order in G.O.No.SR.1/86-3/2006 dated 31.10.2006 passed by the Ist Respondent herein and quash the same and direct the respondent to produce the body of the person of the detenu Viz, Abdullah Ibrahim Ali Son of Abdullah before this Court, was detained under Sec. 3(1)(i) of the COFEPOSA ACT, in the Central prison, Chennai and set him at liberty.

HCP NO. 200/2006:

Calling for the records relating to the detention order in G.O.No. S.R.1/82-2/2006 dated 31.01.2006 passed by the I respondent herein and quash the same and direct the respondent to produce the body of the persons of the detenu namely Hussain Shahul Hameed son of Hussain before this Court now detained under Sec.3(1)(i) of COFEPOSA ACT in the Central Prison, Chennai and set him at liberty.

For petitioner : Mr.S. Palanikumar
in all HCPs.

For respondents : Mr. M. Babu Muthu Meeran
1 and 3 Addl. Public Prosecutor
Mr. P. Kumaresan, ACGSC for R2

COMMON ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The respective petitioners, who were detained under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), by the impugned detention orders dated 30.12.2005 and 31.01.2006, challenge the same in these Petitions.

2. Heard learned counsel for the petitioners as well as the learned counsel for the respondents.

3. For the sake of convenience, first we will decide the case in HCP.No.53 of 2006. At the foremost learned counsel for the petitioner submitted that the detaining authority failed to record its opinion, before accepting the inculpatory statement, on the rejection of retraction letter. Elaborating the above contention learned counsel for the petitioner pointed out that the detenu had sent his retraction letter to the Sponsoring authority (DRI) on 26.12.2005 and the same was rejected by the sponsoring authority on 28.12.2005, and hence, the detaining authority who passed the detention order on 30.12.2005, ought to have independently applied his mind on the retraction letter while arriving at subjective

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satisfaction and recorded his opinion in the grounds of detention. It is also brought to our notice that the Government, on the basis of the materials placed concluded that the averments / contentions contained in the representation are baseless and de void of merit and rejected the same, whereas the grounds of detention at page 6, paragraphs (xi) and (xii) do not disclose the rejection of representation and hence, the detention order is vitiated.

4. It is not in dispute that at the time of arrest the detenu made a confession statement accepting the guilt, however, he retracted the same and sent a letter to the sponsoring authority highlighting the circumstances under which he was forced to make such confession statement. A perusal of the grounds of detention clearly shows that the detaining authority failed to record his opinion on the inculpatory statement and the rejection of retraction letter. In similar circumstances, the Courts have repeatedly held the detention order is vitiated.

5. The learned counsel for the petitioner relied on the decision of the Supreme Court in the case of K.T.M.S. Mohd. And another vs. Union of India reported in 1992 A.I.R. S.C.W. 2062 : AIR 1992 SC 1831. While considering the action being taken on the inculpatory statement, the Supreme Court has observed,

> "33. ..... However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated. ..... "

6. In HCP.No.1858 of 2003 dated 31.03.2003 (A.E. Peer Mohammed vs. State of Tamil Nadu (PS and SRS JJ), while considering similar contention that the detaining authority failed to consider the

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retraction found available in the bail petition at the time of passing the detention order, the division Bench, after referring the decision of the Supreme Court in K.T.M.S. Mohd. and another vs. Union of India (cited supra) has concluded,

> "So, it is a well-settled principle of law that during passing of detention order, while considering the inculpatory statement, the detaining authority has to consider the retraction of the detenu about the earlier confession made by him and unless such retraction is considered and rejected during the course of passing the order of detention, the order may get vitiated. Since this is a settled principle of law and this has not been followed in the case before us, the order of detention impugned in this petition gets vitiated; hence, this petition stands allowed. ....."

Similar view has been expressed by the Division bench of this Court in Peer Mohammed vs. State of Tamil Nadu and another reported in 2006 (2) M.L.J. (Crl.) 492.

7. It is also useful to refer the Division Bench decision rendered in HCP.No.37 of 2006 dated 22.08.2006 (Premnazeer vs. State of Tamil Nadu and others). In that case, where the detaining authority failed to give a specific conclusion on the retracted statement, which is opposed to the decision of the Supreme Court in K.T.M.S. Mohd. and another vs. Union of India (cited supra). In such situation, the Bench has concluded that,

> "13. ..... mere reference to retraction is not sufficient and that it is incumbent on the part of the Detaining Authority to record his opinion before accepting the inculpatory statement, otherwise, the order will be vitiated. "

8. We verified the detention order and the grounds of detention. They do not show that the detaining authority has independently applied his mind on the letter of retraction while arriving at subjective satisfaction. In such circumstances, we are of the view that the decisions of the Supreme Court and this Court would squarely apply to the case on hand. On this ground, the detention order is liable to be quashed.

9. It is also brought to our notice that the detenu is under detention for eight months and the order of detention is for a period of one year. The Hon'ble Supreme Court in the case of Mathew @ Mathachan vs. State of Kerala reported in AIR 1991 SC 1376, taking

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note of the fact that the detenu was under detention for eight months, quashed the order of detention, and ordered release of the detenu forthwith. Inasmuch as in the case on hand the detention order was passed on 30.12.2005, we are of the view that the above said direction is also applicable. We therefore hold that it is just and proper to quash the impugned order of detention and direct for the release of the detenu forthwith provided if he is not required in any other case or cause.

10. Since same grounds have been raised in HCP.Nos.197 and 200 of 2006 and the date of detention is 30.01.2006, the detenus in the said petitions are also directed to be released forthwith, provided if they are not required in any other case or cause.

In the result, all the habeas corpus petitions, viz., HCP.Nos.53, 197 and 200 of 2006 are allowed. The impugned detention orders dated 30.12.2005 and 30.01.2006 are quashed and the detenus are ordered to be set at liberty forthwith unless they are required in any case or cause.

kh

Sd/
Asst.Registrar

/true copy/

TO

Sub Asst.Registrar

1. The Secretary to Government
   State of Tamil Nadu, Public (SC) Department
   Fort St. George, Chennai 600 009.

2. The Secretary to the Government
   The Union of India, Ministry of Finance,
   Department of Revenue
   (COFEPOSA-UNIT), New Delhi.

3. The Superintendent of Central Prison
   Central Prison, Chennai 3. (with 4 copies)

4. The Public Prosecutor, High Court, Madras.

5. The Sub Asst. Registrar,(COFEPOSA), High Court, Madras.

1 CC TO MR.P. KUMARESAN, ACGSC, HIGH COURT, MADRAS.

Common Order in
H.C.P.Nos.53,197 & 200/2006

HPR(CO)
BP/31.10

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